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| 10/024,573 | 12/21/2001 | Andrew Samways | 178/50688 | 2459 |

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EXAMINER

COOLEY, CHARLES E

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1723

DATE MAILED: 12/17/2002

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/024,573

Applicant(s)
Samways

Examiner
Charles Cooley

Art Unit
1723



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.

If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 29 Oct 2002

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-6 and 8-14 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☒ Claim(s) 13 and 14 is/are allowed.

6) ☒ Claim(s) 1-6 and 8-12 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 21 Dec 2001 is/are a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All b) ☐ Some* c) ☐ None of:

1. ☒ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

4) ☐ Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) ☐ Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

6) ☐ Other: _____

Art Unit: 1723

OFFICE ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. § 119, which papers have been placed of record in the file.

Drawings

2. The drawings are objected to under 37 CFR § 1.83(a) since the drawings must show every feature of the invention specified in the claims. Therefore, the following features must be shown or the features canceled from the claims. No new matter should be entered.

- a. the subject matter of claim 12 (the warning means).

- b. the subject matter of claim 13 (the means responsive to the presence of the abutment).

- c. the subject matter of claim 14 (the interlock means).

3. Applicant should verify that (1) all reference characters in the drawings are described in the detailed description portion of the specification and (2) all reference characters mentioned in the specification are included in the appropriate drawing Figure(s) as required by 37 CFR 1.84(p)(5).

4. If the above subject matter is to be shown, Applicant is required to submit a proposed drawing correction in response to this Office Action. Any proposal by the

Art Unit: 1723

applicant for amendment of the drawings to cure defects must include a print or pen-and-ink sketch showing changes in *red ink* in accordance with MPEP § 608.02(v).

IMPORTANT NOTE: The filing of new formal drawings to correct the noted defect may be deferred until the application is allowed by the examiner, but the print or pen-and-ink sketch with proposed corrections shown in red ink is required in response to this Office Action, and *may not be deferred*.

Specification

5. The abstract is acceptable.
6. The amended title of the invention is acceptable.

Claim Rejections - 35 U.S.C. § 112, second paragraph

7. Claims 8-10 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 depends from canceled claim 7.

Claim 10, lines 19 and 20: all occurrences of "the base" lack antecedent basis - change to --the base part--.

Art Unit: 1723

8. Each pending claim should be thoroughly reviewed such that these and any other informalities are corrected so the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 U.S.C. § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-6, 8-9, and 11 are rejected under 35 U.S.C. § 102(b) as being anticipated by Jones (USP 2,321,144).

The patent to Jones (USP 2,321,144) discloses a centrifuge comprising a housing with a base part 14 and a cover part 28; separation rotor 13 mounted on spindle 22; a circumferentially extending (around the rotor 13) restraining surface (the flange area of the rotor just below reference character "41" in Fig. 2 where the first and second component parts of the rotor are joined); a circumferentially annular and axially extending tubular abutment body 24 overlying the restraining surface which is detachably secured to the base via a radially directed mounting flange 25, 26 and

Art Unit: 1723

which abutment has a radially inwardly directed flange overlying the restraining surface (Fig. 2); the spindle having a first stub axle (above 22) and a second stub axle 31.

Claim Rejections - 35 U.S.C. § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 12 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Jones (USP 2,321,144) in view of Brimhall (USP 5,665,047).

Jones (USP 2,321,144) does not disclose the warning means. Brimhall (USP 5,665,047) discloses a centrifuge having a rotor 30 mounted for rotation within housing 12. A cover 14 of the centrifuge has warning means in the form of a window 11. would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the centrifuge of Jones (USP 2,321,144) with warning means such as a window as disclosed by Brimhall (USP 5,665,047) for the purpose of allowing the operator to view the inside of the centrifuge (Col. 3, lines 24-28).

Art Unit: 1723

Allowable Subject Matter

13. Claim 10 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112.

14. Claims 13 and 14 are allowable over the prior art of record. Note, however, the application cannot be allowed until the drawing objections are addressed.

Response to Amendment

15. Applicant's arguments filed 29 OCT 2002 have been fully considered but they are not deemed to be persuasive.

Applicant has completely overlooked the drawing objections set forth in sections 4-6 of the previous action. The record is absent a drawing correction or any remarks addressing the drawing objections. Since the requirements of Rule 83 will not be waived, the subject matter of claims 12-14 must be shown or these claims canceled.

Although applicant believes the amended claims comply with 35 U.S.C. § 112, second paragraph, the deficiencies enumerated above are considered valid for the reasons outlined. Correction of such deficiencies by amendment, subject to the provisions of MPEP 714.12 and 714.13, would appear to place claim 10 in allowable form.

Applicant is reminded that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a

Art Unit: 1723

single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Turning to the rejection of the claims under 35 U.S.C. § 102(b), it is noted that the terminology in a pending application's claims is to be given its broadest reasonable interpretation (*In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)) and limitations from a pending application's specification will not be read into the claims (*Sjolund v. Musland*, 847 F.2d 1573, 1581-82, 6 USPQ2d 2020, 2027 (Fed. Cir. 1988)). Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. See *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1570, 7 USPQ2d 1057, 1064 (Fed. Cir.), cert. denied, 488 U.S. 892 (1988); *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Moreover, anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or the recognition of properties that are inherently possessed by the prior art reference. *Verdegaal Brothers*

Art Unit: 1723

Inc. v. Union Oil co. of California, 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 827 (1987). A prior art reference anticipates the subject matter of a claim when that reference discloses each and every element set forth in the claim (*In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994) and *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990)); however, the law of anticipation does not require that the reference teach what Applicant is claiming, but only that the claims "read on" something disclosed in the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1026 (1984) (and overruled in part on another issue), *SRI Intel v. Matsushita Elec. Corp. Of Am.*, 775 F.2d 1107, 1118, 227 USPQ 577, 583 (Fed. Cir. 1985). Also, a reference anticipates a claim if it discloses the claimed invention such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention. See *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995), *cert. denied*, 116 S.Ct. 1362 (1996), quoting from *In re LeGrice*, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962).

With respect to the applied prior art under 35 U.S.C. § 102(b), the examiner has explicitly demonstrated how the Jones '144 reference discloses each and every element set forth in the claims and how the pending claims read on the disclosure of the reference, hence the rejection is considered proper.

Art Unit: 1723

To maintain a rejection under 35 USC 102 it is necessary that a single prior art reference disclose, either expressly or under the principles of inherency, each and every element of a claimed invention. In order to overcome the rejection under 35 USC 102, the examiner asks Applicant to demonstrate what element of the invention set forth in claims 1-6, 8-9, and 11 is not shown by Jones '144. The claimed structure of the abutment (when giving such terminology its broadest reasonable interpretation as is required of the examiner) is clearly disclosed by Jones '144, thus it is not seen where the rejection is in error.

The pith of Applicant's arguments are directed to functional aspects of the invention (such as the function of the abutment), rather than structural distinctions between the claimed invention and the prior art. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danley*, 120 USPQ 528, 531 (CCPA 1959). "Apparatus claims cover what a device is, not what a device does." (emphasis in original) *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

Contrary to Applicant's assertion, the elements 25 and 26 in Jones '144 is considered equivalent to the "radially directed mounting flange for securing the abutment to the base part of the housing" as set forth in amended claim 1. Note Jones states "This guard may be detachably secured in place by means of spring-pressed detents 25 secured in arms 26 which extend radially inward from the rotor casing"

Art Unit: 1723

(Page 2, col. 1, lines 53-54). Therefore the radially directed mounting flange (25, 26) does indeed securely, yet detachably, mount the abutment 24 to the housing.

Applicant concludes that the detents 25 cannot withstand forces generated by the supply pressure, however, Applicant's position on this point is considered to be speculative attorney's argument unsupported by objective technical evidence on the issue. Arguments of counsel cannot take the place of evidence in the record. *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); *In re Pearson*, 494 F.2d 1399, 1405, 181 USPQ 641, 646 (CCPA 1974).

Furthermore, the claims are devoid of limitations drawn to supply pressure forces to which the abutment may be subjected. Such arguments are of no patentable consequence because it is well settled that features not claimed may not be relied upon in support of patentability. *In re Self*, 671 F.2d 1344, 213 USPQ 1 (CCPA 1982). Although a claim should be interpreted in light of the specification disclosure, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Art Unit: 1723

In conclusion, the amendments made in the instant application are not deemed of a substantive nature to define over the prior art and thus the rejections are considered proper.

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION. **ANY RESPONSE FILED AFTER THE MAILING DATE OF THIS FINAL REJECTION WILL BE SUBJECT TO THE PROVISIONS OF MPEP 714.12 AND 714.13.**

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Charles Cooley whose telephone number is ☎ (703) 308-0112.

Art Unit: 1723

18. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1700 receptionist whose telephone number is (703) 308-0651.



Dated: 13 December 2002

Charles Cooley
Primary Examiner
Art Unit 1723